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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PAUL ADAMS,
CDCR #F-92755,

Plaintiff,

vs.

K. RASKE, et al.

Defendants.

Civil No. 11cv0243 WQH (JMA)

ORDER

**(1) DENYING MOTION TO
DISQUALIFY MAGISTRATE
JUDGE (ECF No. 14); and**

**(2) DISMISSING THIRD AMENDED
COMPLAINT FOR FAILING TO
COMPLY WITH COURT ORDER;
FAILING TO STATE A CLAIM AND
AS FRIVOLOUS PURSUANT TO 28
U.S.C. §§ 1915(e)(2)(B) & 1915A(b)**

I. Procedural History

On February 4, 2011, Plaintiff, a state inmate currently incarcerated at Ironwood State Prison located in Blythe, California, and proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. In his Complaint, Plaintiff alleged that he was denied access to the courts when he was housed at Calipatria State Prison in 2009. Plaintiff also filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) [ECF No. 2].

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1 On March 30, 2011, the Court granted Plaintiff's Motion to Proceed IFP and dismissed
2 his Complaint for failing to state a claim upon which relief could be granted. (ECF No. 3 at 4-
3 5.) The Court granted Plaintiff leave to file an Amended Complaint in order to correct the
4 deficiencies of pleading identified by the Court. *Id.* Plaintiff was also cautioned that any
5 Defendants not named and claims not re-alleged in the Amended Complaint would be deemed
6 to have been waived. *Id.* (citing *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987)). Plaintiff
7 then filed his First Amended Complaint ("FAC"). In his First Amended Complaint, Plaintiff no
8 longer names as Defendants, J. Chiang or B. Leonard. Thus, those Defendants were dismissed
9 from this action. (ECF No. 7 at 2.)

10 On July 25, 2011, the Court, once again, dismissed Plaintiff's First Amended Complaint
11 for failing to state a claim upon which relief could be granted but permitted Plaintiff leave to file
12 a Second Amended Complaint. (ECF No. 7 at 5.) Plaintiff failed to submit a Second Amended
13 Complaint within the time frame set forth in the Court's Order but the Court permitted Plaintiff
14 to file a Second Amended Complaint ("SAC") on September 7, 2012. (ECF NO. 9.) The Court,
15 once again, conducted the required sua sponte screening and found that Plaintiff's Second
16 Amended Complaint failed to state a claim upon which relief could be granted and was
17 frivolous. (ECF No. 10 at 6-7.) Again, Plaintiff was granted leave to file an Amended
18 Complaint to correct the deficiencies of pleading identified by the Court. Plaintiff was
19 specifically admonished by the Court that he must comply with both the Federal Rules of Civil
20 Procedure Rule 8 and Local Rule 8.2 which provides that prisoners must use the Court's form
21 complaint and any additional pages are "not to exceed fifteen (15) in number." (*Id.* at 3.)

22 Instead of complying with the Court's Order, Plaintiff filed his Third Amended
23 Complaint ("TAC") which fails to comply with the Court's previous Order, Rule 8 or Local Rule
24 8.2. (ECF No. 12.) In addition, Plaintiff has filed a "Motion to Disqualify Magistrate Judge."
25 (ECF No. 14.)

26 **II. MOTION TO DISQUALIFY MAGISTRATE JUDGE**

27 Plaintiff has filed a "Motion to Disqualify Magistrate Judge." (ECF No. 14.) In this
28 Motion, Plaintiff contends that the Magistrate Judge in this matter has "performed prejudicially

1 and has caused undue delay, and hindered Plaintiff's ability to meaningfully litigate his case and
2 his serious constitutional claims." (ECF No. 14 at 1.) However, while Plaintiff seeks to
3 disqualify Magistrate Judge Jan Adler from this matter, Magistrate Judge Adler has not issued
4 any rulings in this case. It has been this Court who has issued the rulings in this matter and
5 therefore, the Court construes Plaintiff's Motion as one seeking recusal of United States District
6 Judge William Hayes.

7 "In the absence of a legitimate reason to recuse himself, a judge has a duty to sit in
8 judgment in all cases coming before him," *United States v. Holland*, 501 F.3d 1120, 1123 (9th
9 Cir. 2007) (citing *Laird v. Tatum*, 409 U.S. 824, 837 (1972)), "except those in which [his]
10 'impartiality might reasonably be questioned.'" *Id.* (citing 28 U.S.C. § 455(a) ("[a]ny justice,
11 judge, or magistrate judge of the United States shall disqualify himself in any proceeding in
12 which his impartiality might reasonably be questioned.")). A motion to disqualify "must be
13 evaluated on an objective basis, so that what matters is not the reality of bias or prejudice but its
14 appearance." *Liteky v. United States*, 510 U.S. 540, 549 (1994).

15 Here, Plaintiff claims this Court's impartiality is in question based, in part, on the
16 previous Orders dismissing his pleadings for failing to state a claim and as frivolous pursuant
17 to the sua sponte screening provisions of 28 U.S.C. § 1915(e)(2) and § 1915A(b). Plaintiff
18 claims that this Court has been "litigating for the Defendants, before the case is even served on
19 them." (ECF No. 14 at 1.) As the Court has stated to Plaintiff in all the prior orders, the Prison
20 Litigation Reform Act ("PLRA") requires the Court to engage in a screening process of all
21 complaints filed by prisoners. Under the PLRA, the Court *must* sua sponte dismiss any prisoner
22 civil action, or any portions thereof, which are frivolous, malicious, fail to state a claim, or
23 which seek damages from defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and
24 1915A.

25 The Supreme Court has held that judicial rulings and the opinions formed by judges on
26 the basis of facts introduced in the course of proceedings "almost never constitute a valid basis
27 for a bias or partiality motion ... unless they display a deep-seated favoritism or antagonism that
28 would make fair judgment impossible." *Liteky*, 510 U.S. at 555; *see also Holland*, 501 F.3d at
1124 ("[Section] 455 is limited by the 'extrajudicial source' factor which generally requires as

1 the basis for recusal something other than rulings, opinions formed or statements made by the
2 judge during the course of the [case.]”). “Put differently, the judge’s conduct,” including “the
3 mere fact that a judge has previously expressed an opinion on a point of law,” or has issued
4 adverse “prior rulings in the proceeding,” does not ““except in the rarest of circumstances”” form
5 the sole basis for recusal under § 455(a).” *Holland*, 501 F.3d at 1124-25 (citations omitted); *see*
6 *also Leslie v. Grupo ICA*, 198 F.3d 1152, 1159-60 (9th Cir. 1999).

7 Plaintiff contends that this Court has “caused a suspicious undue delay in this case” and
8 argues that this Court delayed the screening of this matter for two years. (ECF No. 14 at 2.) A
9 review of the Court’s docket indicates that this is incorrect. Plaintiff initially filed this action
10 on February 4, 2011. (ECF No. 1.) The Court conducted the first sua sponte screening on
11 March 30, 2011. (ECF No. 3.) Plaintiff filed his First Amended Complaint on April 21, 2011.
12 (ECF No. 4.) The Court, again, conducted the required sua sponte screening on July 25, 2011.
13 (ECF No. 7.) Despite the Court’s Order allowing Plaintiff forty five (45) days to file a Second
14 Amended Complaint, Plaintiff waited nearly fourteen months to file his Second Amended
15 Complaint. (ECF No. 9.) Despite the untimeliness of this pleading, the Court permitted
16 Plaintiff to proceed in this action. Therefore, the delays in this action have been due to
17 Plaintiff’s failure to timely comply with the Court’s Orders.

18 Plaintiff has made no showing of “rare circumstances,” *Holland*, 501 F.3d at 1124 n.4,
19 or “deep-seated favoritism or antagonism” of any sort here. *Liteky*, 510 U.S. at 555. And absent
20 some specific allegation of personal bias, prejudice or interest, the mere fact that this Court
21 exercised its statutory duty under 28 U.S.C. § 1915(e)(2) and § 1915A(b) and found his
22 pleadings insufficient to state a claim, is not enough to show that the Court’s impartiality may
23 reasonably be questioned. *See Davis v. Fendler*, 650 F.2d 1154, 1163 (9th Cir. 1980) (“In the
24 absence of specific allegations of personal bias, prejudice, or interest, neither prior adverse
25 rulings of a judge nor his participation in a related or prior proceeding is sufficient” to require
26 recusal). Plaintiff’s Motion to Disqualify is **DENIED**.

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1 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

2 The Prison Litigation Reform Act's ("PLRA") amendments to 28 U.S.C. § 1915 obligate
3 the Court to review complaints filed by all persons proceeding IFP and by those, like Plaintiff,
4 who are "incarcerated or detained in any facility [and] accused of, sentenced for, or adjudicated
5 delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial
6 release, or diversionary program," "as soon as practicable after docketing." See 28 U.S.C.
7 §§ 1915(e)(2)(B) and 1915A(b). Under these provisions, the Court must sua sponte dismiss any
8 prisoner civil action and all other IFP complaints, or any portions thereof, which are frivolous,
9 malicious, fail to state a claim, or which seek damages from defendants who are immune. See
10 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
11 (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 n.1 (9th Cir. 2000) (§ 1915A).

12 To state a claim under § 1983, Plaintiff must allege that: (1) the conduct he complains
13 of was committed by a person acting under color of state law; and (2) that conduct violated a
14 right secured by the Constitution and laws of the United States. *Humphries v. County of Los*
15 *Angeles*, 554 F.3d 1170, 1184 (9th Cir. 2009) (citing *West v. Atkins*, 487 U.S. 42, 48 (1988)).

16 The Court has reviewed Plaintiff's Third Amended Complaint, which is nearly one
17 hundred and fifty (150) pages and found it to be identical, with the exception of a few additional
18 pages, to Plaintiff's Second Amended Complaint which the Court has already found to be
19 deficient. These additional pages offer no factual allegations or attempts to correct the
20 deficiencies of pleading identified in the Court's February 19, 2013 Order. Instead, Plaintiff
21 lists, for the second time, each of the named Defendants and sets forth eighteen causes of action
22 with no additional facts. (ECF No. 12 at 10-23.) See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 ("A
23 pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause
24 of action will not do.'") (citations omitted.)

25 Moreover, Plaintiff failed to comply with Rule 8 or Local Rule 8.2 as ordered by the
26 Court in the February 19, 2013 Order. "Prolix, confusing complaints such as the ones plaintiffs
27 filed in this case impose unfair burdens on litigants and judges." *McHenry v. Renne*, 84 F.3d
28 1172, 1179 (9th Cir. 1996). By filing a nearly one hundred and fifty (150) page pleading that

1 was identical to his Second Amended Complaint, Plaintiff made no effort to comply with the
2 Court's previous Order by either complying with Rule 8 or correcting the deficiencies of
3 pleading noted by the Court.

4 Therefore, the Court dismisses Plaintiff's Third Amended Complaint, for the reasons set
5 forth in the Court's February 19, 2013 Order dismissing Second Amended Complaint for failing
6 to state a claim and as frivolous, for failing to comply with Rule 8 and for failing to comply with
7 a Court Order.

8 **III. CONCLUSION AND ORDER**

9 Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

10 1. Plaintiff's Motion to Disqualify is **DENIED**.

11 **IT IS FURTHER ORDERED that:**

12 2. Plaintiff's Third Amended Complaint is **DISMISSED** with prejudice for failing
13 to state a claim upon which relief may be granted and as frivolous, for failing to comply with
14 Rule 8 and failing to comply with a Court Order. *See* 28 U.S.C. § 1915(e)(2) & § 1915A(b);
15 FED.R.CIV.P. 8. In addition, the Court finds further amendment would be futile. *See Cahill v.*
16 *Liberty Mut. Ins. Co.*, 80 F.3d 336, 339 (9th Cir. 1996) (denial of a leave to amend is not an
17 abuse of discretion where further amendment would be futile); *see also Robinson v. California*
18 *Bd. of Prison Terms*, 997 F. Supp. 1303, 1308 (C.D. Cal. 1998) ("Since plaintiff has not, and
19 cannot, state a claim containing an arguable basis in law, this action should be dismissed without
20 leave to amend; any amendment would be futile.") (citing *Newland v. Dalton*, 81 F.3d 904, 907
21 (9th Cir. 1996)).

22 The Clerk of Court shall close the file.

23 **IT IS SO ORDERED.**

24
25 DATED: 8/9/13


26 HON. WILLIAM Q. HAYES
27 United States District Judge
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